

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 84 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

AAYER MERAMAN MURU

Versus

AAYER JIVTIBEN MERAMAN

Appearance:

MR VM DHOTRE for Petitioner
MR YS LAKHANI for Opponent No. 1
Opponent No.3 served.

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision:21/03/96

ORAL JUDGEMENT

Being aggrieved by the judgment dated 14th December 1994 passed by the then learned Judicial Magistrate (F.C.) at Porbandar in Criminal Misc. Application No. 592 of 1991 on his file whereby the application for maintenance was allowed and present petitioner has been ordered to pay maintenance to the opponent No.1 at the rate of Rs.400/- per month and to opponent No.2 at the rate of Rs.250/- per month, in all Rs.650/- per month, and the amount of costs of Rs.500/-,

the original opponent has preferred this revision.

2. The facts in brief are that the petitioner and opponent No.1 married as per the Hindu rites and their caste custom. After solemnization of marriage both resided together as husband and wife at Bhoddar in Ranavav Taluka of Junagadh District. They have a son who is opponent No.2 in this present revision application. Initially their married life was very happy but unfortunately by passage of time for one or the another reason dissension arose between the two which led to frequent quarrels disturbing their married life. Often the opponent No.1 was tormented, tortured and terrorised. She was also beaten. However she used to tolerate the ill-treatment thinking that sooner or later wisdom would dawn upon the petitioner and every thing would set right and she would have the happy days again. However the petitioner became more and more wicked and continued to ill-treat her. She was then driven out. Being helpless she went to her father and since then she has been passing through miseries and woes and is solely dependent upon her father. After she was driven out the petitioner took no care of them and even did not make any arrangement for their maintenance. With no option therefore the opponents Nos. 1 & 2 filed Criminal Misc. Application No. 592 of 1991 under Section 125 of the Criminal Procedure Code for maintenance against the present petitioner. The petitioner was served with the notice. He appeared before the lower court and preferred to contest the application. In defence he has denied every allegation levelled against him and has found fault with the opponent No.1. Both the parties before the learned Magistrate adduced necessary evidence. Considering the evidence before him the learned Judge reached the conclusion that the opponents Nos. 1 and 2 were without any reasonable cause neglected and refused to be maintained. They had the right to have the maintenance. He therefore passed the order against the petitioner directing him to pay the maintenance to both the opponents as aforesaid. It is against that order the present revision application has been preferred.

3. On behalf of the respondents, it was contended that the revision application was not maintainable. In view of the decision of this court in the case of Brahmchari Satyanarayan Maharaj v. Kantilal L. Dave and others - 1976 Criminal Law Journal, 1806 the present revision application has been filed before this Court and that being consistent with the provision of law apart from sound practice cannot be thrown overboard only on that count.

4. At the time of hearing before me, both the parties wanted to assail or support the judgment of the lower court on several grounds but later on the learned Advocate representing the petitioner submitted that he would be challenging the order of the lower Court only on the point of quantum of maintenance awarded. According to him the petitioner was earning Rs.700/- per month working as a broker at Bombay. Considering his income the amount of maintenance fixed was highly cumbersome and unjust. On the other side the ld. advocate representing the opponents Nos. 1 & 2 submitted that real income was suppressed. In fact the petitioner was earning Rs.3,000/- to Rs. 4,000/- per month by way of brokerage at Bombay. Further he was having 50 bigas of agricultural land at Bhoddar and was earning more than Rs.1,00,000/-. The petitioner was also having the income by selling the milk as they were maintaining cows and buffalows at home.

5. When before me the point about quantum of maintenance only has been raised, I will confine to that point alone. Before I proceed to dissect the evidence on record it may be stated that the court has to ascertain appreciating the evidence on record the income of the person responsible to maintain his dependents because the quantum of maintenance must be commensurating with the income and other legal liabilities; after all the person responsible for maintenance has also to keep his body and soul together and he is not expected to go to the market and beg or starve or become insolvent for those claiming unjust or unreasonably high amount of maintenance.

6. In this case both have on oath before the lower court stated about the income they assert. There is therefore a word against word and therefore in the absence of further evidence supporting or discrediting the case of one or the another party, I have to ascertain the income on the basis of reasonable guess work. In the year 1991 the application for maintenance was filed before the lower court. In that year what I could see from the submission of both that the brokerage had showed upward tendency than what was in past. The petitioner looking to the then prevailing rates must be getting at least Rs.1,500/per month by way of brokerage.

7. Admittedly, the petitioner is having 50 bigas of land at Bhoddar his native place. Out of the total area of the land, 10 bigas of land is irrigated land. Every year groundnut, millet, jowar and other crops are being taken. It is not made clear what is the agricultural

income. It should also be borne in mind that agricultural income depends upon rains and therefore it is always fluctuating. It cannot remain the same for years together. Hence the endeavour of the Court should be to find out average income. If the crop is taken in the year in which the land is situated the average yearly income deducting all expenses can be round about Rs.80,000/- to Rs.1,00,000/-. It may be stated that the agricultural land is jointly owned by the petitioner. His seven brothers are also the sharers. Hence about Rs.10,000/- per year would be the agricultural income falling to the share of the petitioner. Over and above such income the petitioner's family and his brothers are also selling the milk to co-operative society as they also maintain certain number of cows and buffalows. The income of the milk being of the joint family income, the petitioner must be getting at least Rs.1,500/- per year to his share. In all therefore the petitioner must be having the income of about Rs.1,100/- to Rs.1,200/- per month. That should be considered to be the base for the purpose of fixing the amount of maintenance.

8. The petitioner has not to maintain his brothers or father and mother because out of the joint family income they are all maintained. The petitioner is therefore alone who has to be maintained himself out of above stated income and he is liable to maintain the opponents Nos. 1 and 2. Considering his such income whatever has been awarded by the learned Magistrate below by way of the maintenance is quite just and proper and I see no justification to reduce the same as canvassed by the learned Advocate representing the petitioner. In short, there is no reason considering the evidence on record to disturb the findings and order passed by the learned Magistrate. The quantum of maintenance is quite in proportion to the income of the petitioner and therefore there is no justifiable reason to allow the revision and upset the finding. The revision is devoid of merits and deserves to be rejected. In the result, this revision application is hereby dismissed. No order as to costs.

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